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Paper No. 9

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In re Application of
A. Tanju Erdem
Application No. 09/689,565
Filed: October 12, 2000
For: **METHOD FOR TRACKING MOTION
OF A FACE**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition for reconsideration of abandonment filed July 14, 2004, which is treated as a Petition to Withdraw the Holding of Abandonment pursuant to 37 C.F.R. §1.181. No fee is required.

This application was held abandoned for failure to respond to the Office action mailed August 4, 2003. A Notice of Abandonment was mailed on July 1, 2004.

Petitioner states that a response was in fact timely filed. To support this assertion, petitioner has submitted a certificate of mailing for the instant petition, the subject petition, a copy of a credit card payment form, a certificate of mailing for a postcard, copy of a date-stamped return postcard which acknowledges receipt by the Patent and Trademark Office of a response on January 7, 2004, a certificate of mailing for a copy of the response to Office action which was allegedly filed January 5, 2004, a petition for extension of time (two months) which included a certificate of mailing, and a copy of the alleged response (Amendment).

The date stamped on the post card receipt of January 7, 2004 is subsequent to the due date for response to the three month shortened statutory time period for response set forth in the Office action mailed August 4, 2003 including two additional months extension of time. The time period for response to the outstanding Office action, inclusive of two months extension of time would have been January 5, 2004.

A certificate of mailing in accordance with 37 CFR 1.8(a) on a transmittal form which itemizes the papers being transmitted, or on each document, along with a personal statement of the person who actually mailed or transmitted via facsimile transmission, would ordinarily be sufficient such that the correspondence would be accepted as having been timely filed.

37 C.F.R. § 18(a) states in part:

- (1) Correspondence will be considered as being timely filed if:
 - (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
 - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or
 - (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
 - (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated. [emphasis added]

In the subject application, the certificate of mailing for the instant petition, certificate of mailing for the postcard, and the certificate of mailing for a copy of the response to Office action which was allegedly filed January 5, 2004, are all addressed to another serial number, i.e., 09/589,595. Moreover, the petition package does not include a personal statement from the person who mailed the correspondence, stating that they actually mailed the correspondence on that day.

The petition for extension of time with certificate of mailing, certificate of mailing for the amendment and the amendment (response) also fail to include a personal statement from the person who mailed the correspondence, stating that they actually mailed the correspondence on that day. In addition the aforementioned documents reference a different serial number than for the subject application or the application previously mentioned above. The serial number identified in the petition for extension of time, certificate of mailing and amendment is 09/689,566.

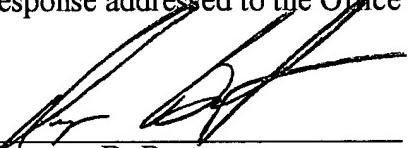
This last serial number enjoys the same filing date and inventor as the subject application. It would appear as though the petition for extension of time was applied to serial number 09/689,566 as addressed in the petition. Furthermore, it would appear as though the credit card payment form indicates that the payment was made using a credit card that had an expiration of June 2004.

In summary, the petition contains evidence of submissions for other applications, particularly the amendment (response). There is no personal statement from the person signing the certificate of mailing stating that each document was actually mailed on the date specified. The credit card used to pay for the extension of time for another application appears to have expired. Finally, the certificates of mailing address different serial numbered applications, particularly the one for the date-stamped post card receipt which is required to show timeliness of the overall submission, i.e., the date stamped post card is addressed to one application and arrived two days late, the certificate of mailing for a date stamp post card identifies a different application. Without a proper certificate of mailing for the date-stamp post card receipt for the subject application, then the date-stamp post card receipt reveals that the submission was filed two days late.

In view of the above stated reasons, the petition to withdraw the holding of abandonment is **DENIED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 C.F.R. '1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "A Renewed Petition To Withdraw the Holding of Abandonment".

Alternatively, applicant may petition under 37 C.F.R. 1.137, with appropriate fee and copy of response addressed to the Office of Petitions, to revive the subject application.



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